

relevant to the inquiry. The production of any such records may be required from any place in the United States.

(2) Administrative hearings

For the purpose of an administrative hearing held under section 6008 or 6009 of this title, the presiding officer is authorized to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any records that are relevant to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in the United States.

(c) Aid of courts

In case of contumacy by, or refusal to obey a subpoena issued to, any person, the Secretary may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in order to enforce a subpoena issued by the Secretary under subsection (b) of this section. The court may issue an order requiring such person to comply with such a subpoena.

(d) Contempt

Any failure to obey such order of the court may be punished by such court as a contempt thereof.

(e) Process

Process in any such case may be served in the judicial district in which such person resides or conducts business or wherever such person may be found.

(f) Hearing site

The site of any hearings held under section 6008 or 6009 of this title shall be within the judicial district where such person resides or has a principal place of business.

(Pub. L. 101-624, title XIX, §1915, Nov. 28, 1990, 104 Stat. 3852; Pub. L. 102-237, title VIII, §802(3), Dec. 13, 1991, 105 Stat. 1882.)

AMENDMENTS

1991—Subsec. (b)(2). Pub. L. 102-237 struck out “section” after “6008 or”.

§ 6011. Requirement of referendum

(a) In general

Not later than 24 months after the effective date of the plan first issued under section 6003 of this title, the Secretary shall conduct a referendum among growers, grower-shellers, and importers, who during a representative period determined by the Secretary have been engaged in the production or importation of pecans, for the purpose of ascertaining whether growers, grower-shellers, and importers favor continuation, termination, or suspension of the plan.

(b) Other referenda

(1) In general

After the referendum required under subsection (a) of this section, the Secretary shall hold a referendum on request of the Board or 10 percent or more of the total number of growers, grower-shellers, and importers, to de-

termine if growers, grower-shellers, and importers favor the termination or suspension of the plan.

(2) Suspension or termination

The Secretary shall terminate or suspend such plan, in accordance with section 6012(b) of this title, whenever the Secretary determines that such suspension or termination is favored by a majority of those voting in a referendum.

(c) Costs of referendum

The Secretary shall be reimbursed from any assessments collected by the Board for any expenses incurred by the Department in connection with the conduct of any referendum under this chapter, except for the salaries of Government employees.

(d) Manner

(1) In general

Referenda conducted pursuant to this chapter shall be conducted in such a manner as is determined by the Secretary.

(2) Advance registration

A grower, grower-sheller, or importer who chooses to vote in any referendum conducted under this chapter shall register in person prior to the voting period at the appropriate local office of the Agricultural Stabilization and Conservation Service, as determined by the Secretary, for such grower, grower-sheller, or by mailing such a request to the Secretary on behalf of an importer.

(3) Voting

A grower, grower-sheller, or importer who votes in any referendum conducted under this chapter shall vote in person at the appropriate local office of the Agricultural Stabilization and Conservation Service, as determined by the Secretary or by mail to the Secretary.

(4) Notice

Each Agricultural Stabilization and Conservation Service office shall notify all growers, grower-shellers, and importers in the area of such office, as determined by the Secretary, at least 30 days prior to a referendum conducted under this chapter. Such notice shall explain the registration and voting procedures established under this subsection.

(Pub. L. 101-624, title XIX, §1916, Nov. 28, 1990, 104 Stat. 3853.)

§ 6012. Suspension or termination of plan

(a) Mandatory suspension or termination

The Secretary shall, whenever the Secretary finds that the plan or any provision of the plan obstructs or does not tend to effectuate the declared policy of this chapter, terminate or suspend the operation of such plan or provision.

(b) Suspension or termination

If, as a result of any referendum conducted under this chapter, the Secretary determines that suspension or termination of a plan is favored by a majority of the growers, grower-shellers, and importers voting in the referendum, the Secretary shall—

(1) within 6 months after making such determination, suspend or terminate, as the case may be, collection of assessments under the plan; and

(2) suspend or terminate, as the case may be, activities under the plan in an orderly manner as soon as practicable.

(c) Limitation

The termination or suspension of any plan, or any provision thereof, shall not be considered a plan within the meaning of this chapter.

(Pub. L. 101-624, title XIX, §1917, Nov. 28, 1990, 104 Stat. 3854.)

§ 6013. Authorization of appropriations

(a) In general

There are authorized to be appropriated for each fiscal year such sums as are necessary to carry out this chapter.

(b) Administrative expenses

Funds appropriated to carry out this chapter shall not be available for payment of the expenses or expenditures of the Board in administering any provision of any plan issued under this chapter.

(Pub. L. 101-624, title XIX, §1918, Nov. 28, 1990, 104 Stat. 3854.)

CHAPTER 90—MUSHROOM PROMOTION, RESEARCH, AND CONSUMER INFORMATION

Sec.	
6101.	Findings and declaration of policy. <ol style="list-style-type: none"> (a) Findings. (b) Policy. (c) Construction.
6102.	Definitions.
6103.	Issuance of orders. <ol style="list-style-type: none"> (a) In general. (b) Procedures. (c) Amendments.
6104.	Required terms in orders. <ol style="list-style-type: none"> (a) In general. (b) Mushroom Council. (c) Powers and duties of Council. (d) Plans and budgets. (e) Contracts and agreements. (f) Books and records of Council. (g) Assessments. (h) Prohibition. (i) Books and records. (j) Other terms and conditions.
6105.	Referenda. <ol style="list-style-type: none"> (a) Initial referendum. (b) Succeeding referenda. (c) Manner.
6106.	Petition and review. <ol style="list-style-type: none"> (a) Petition. (b) Review.
6107.	Enforcement. <ol style="list-style-type: none"> (a) Jurisdiction. (b) Referral to Attorney General. (c) Civil penalties and orders. (d) Review by district court. (e) Failure to obey orders. (f) Failure to pay penalties.
6108.	Investigations and power to subpoena. <ol style="list-style-type: none"> (a) Investigations. (b) Subpoenas, oaths, and affirmations. (c) Aid of courts. (d) Contempt. (e) Process. (f) Hearing site.

Sec.	
6109.	Savings provision.
6110.	Suspension or termination of orders.
6111.	Authorization of appropriations. <ol style="list-style-type: none"> (a) In general. (b) Administrative expenses.
6112.	Regulations.

§ 6101. Findings and declaration of policy

(a) Findings

Congress finds that—

(1) mushrooms are an important food that is a valuable part of the human diet;

(2) the production of mushrooms plays a significant role in the Nation's economy in that mushrooms are produced by hundreds of mushroom producers, distributed through thousands of wholesale and retail outlets, and consumed by millions of people throughout the United States and foreign countries;

(3) mushroom production benefits the environment by efficiently using agricultural by-products;

(4) mushrooms must be high quality, readily available, handled properly, and marketed efficiently to ensure that the benefits of this important product are available to the people of the United States;

(5) the maintenance and expansion of existing markets and uses, and the development of new markets and uses, for mushrooms are vital to the welfare of producers and those concerned with marketing and using mushrooms, as well as to the agricultural economy of the Nation;

(6) the cooperative development, financing, and implementation of a coordinated program of mushroom promotion, research, and consumer information are necessary to maintain and expand existing markets for mushrooms; and

(7) mushrooms move in interstate and foreign commerce, and mushrooms that do not move in such channels of commerce directly burden or affect interstate commerce in mushrooms.

(b) Policy

It is declared to be the policy of Congress that it is in the public interest to authorize the establishment, through the exercise of the powers provided in this chapter, of an orderly procedure for developing, financing through adequate assessments on mushrooms produced domestically or imported into the United States, and carrying out, an effective, continuous, and coordinated program of promotion, research, and consumer and industry information designed to—

(1) strengthen the mushroom industry's position in the marketplace;

(2) maintain and expand existing markets and uses for mushrooms; and

(3) develop new markets and uses for mushrooms.

(c) Construction

Nothing in this chapter may be construed to provide for the control of production or otherwise limit the right of individual producers to produce mushrooms.

(Pub. L. 101-624, title XIX, §1922, Nov. 28, 1990, 104 Stat. 3855.)

SHORT TITLE

Section 1921 of Pub. L. 101-624 provided that: “This subtitle [subtitle B (§§1921-1933) of title XIX of Pub. L. 101-624, enacting this chapter] may be cited as the ‘Mushroom Promotion, Research, and Consumer Information Act of 1990’.”

§ 6102. Definitions

As used in this chapter—

(1) Commerce

The term “commerce” means interstate, foreign, or intrastate commerce.

(2) Consumer information

The term “consumer information” means information and programs that will assist consumers and other persons in making evaluations and decisions regarding the purchase, preparation, and use of mushrooms.

(3) Council

The term “Council” means the Mushroom Council established under section 6104(b) of this title.

(4) Department

The term “Department” means the Department of Agriculture.

(5) First handler

The term “first handler” means any person, as described in an order issued under this chapter, who receives or otherwise acquires mushrooms from a producer and prepares for marketing or markets such mushrooms, or who prepares for marketing or markets mushrooms of that person’s own production.

(6) Importer

The term “importer” means any person who imports, on average, over 500,000 pounds of mushrooms annually from outside the United States.

(7) Industry information

The term “industry information” means information and programs that are designed to lead to the development of new markets and marketing strategies, increased efficiency, and activities to enhance the image of the mushroom industry.

(8) Marketing

The term “marketing” means the sale or other disposition of mushrooms in any channel of commerce.

(9) Mushrooms

The term “mushrooms” means all varieties of cultivated mushrooms grown within the United States for the fresh market, or imported into the United States for the fresh market, that are marketed, except that such term shall not include mushrooms that are commercially marinated, canned, frozen, cooked, blanched, dried, packaged in brine, or otherwise processed, as may be determined by the Secretary.

(10) Person

The term “person” means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity.

(11) Producer

The term “producer” means any person engaged in the production of mushrooms who owns or who shares the ownership and risk of loss of such mushrooms and who produces, on average, over 500,000 pounds of mushrooms per year.

(12) Promotion

The term “promotion” means any action determined by the Secretary to enhance the image or desirability of mushrooms, including paid advertising.

(13) Research

The term “research” means any type of study to advance the image, desirability, marketability, production, product development, quality, or nutritional value of mushrooms.

(14) Secretary

The term “Secretary” means the Secretary of Agriculture.

(15) State and United States

The terms “State” and “United States” include the 50 States of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(Pub. L. 101-624, title XIX, §1923, Nov. 28, 1990, 104 Stat. 3855.)

§ 6103. Issuance of orders**(a) In general**

To effectuate the declared policy of section 6101(b) of this title, the Secretary, subject to the procedures provided in subsection (b) of this section, shall issue orders under this chapter applicable to producers, importers, and first handlers of mushrooms. Any such order shall be national in scope. Not more than one order shall be in effect under this chapter at any one time.

(b) Procedures**(1) Issuance of an order**

The Secretary may propose the issuance of an order under this chapter, or an association of mushroom producers or any other person that will be affected by this chapter may request the issuance of, and submit a proposal for, such an order.

(2) Publication of order

Not later than 60 days after the receipt of a request and proposal by an interested person for an order, or when the Secretary determines to propose an order, the Secretary shall publish the proposed order and give due notice and opportunity for public comment on the proposed order.

(3) Issuance of order

After notice and opportunity for public comment are given, as provided in paragraph (2), the Secretary shall issue the order, taking into consideration the comments received and including in the order provisions necessary to ensure that the order is in conformity with the requirements of this chapter. Such order shall be issued and, if approved by producers and importers of mushrooms as provided in section 6105(a) of this title, shall become effec-

tive not later than 180 days following publication of the proposed order.

(c) Amendments

(1) In general

The Secretary, from time to time, may amend any order issued under this section.

(2) Application of chapter

The provisions of this chapter applicable to an order shall be applicable to amendments to the order.

(Pub. L. 101-624, title XIX, §1924, Nov. 28, 1990, 104 Stat. 3856.)

§ 6104. Required terms in orders

(a) In general

Each order issued under this chapter shall contain the terms and conditions prescribed in this section.

(b) Mushroom Council

(1) Establishment and membership of Council

(A) Establishment

The order shall provide for the establishment of, and selection of members to, a Mushroom Council that shall consist of at least 4 members and not more than 9 members.

(B) Membership

Except as provided for in paragraph (2), the members of the Council shall be mushroom producers and importers appointed by the Secretary from nominations submitted by producers and importers in the manner authorized by the Secretary, except that no more than one member may be appointed to the Council from nominations submitted by any one producer or importer.

(2) Appointments

(A) In general

In making appointments, the Secretary shall take into account, to the extent practicable, the geographical distribution of mushroom production throughout the United States, and the comparative volume of mushrooms imported into the United States.

(B) Units

In establishing such geographical distribution of mushroom production, a whole State shall be considered as a unit and such units shall be organized into 4 regions that shall fairly represent the geographic distribution of mushroom production within the United States.

(C) Importers

Importers shall be represented as one region, which shall be separate from the regions established for mushrooms produced in the United States.

(D) Members per region

The Secretary shall appoint one member from each region if such region produces or imports, on average, at least 35,000,000 pounds of mushrooms annually.

(E) Additional members

Subject to the nine-member limit on the number of members on the Council provided in paragraph (1), the Secretary shall appoint an additional member to the Council from a region for each additional 50,000,000 pounds of production or imports per year, on average, within the region.

(F) Average annual production

For purposes of this paragraph, in determining average annual mushroom production in each of the 4 regions of the United States established under this paragraph, the Secretary shall only consider mushrooms produced by producers covered by this chapter, as defined in section 6102(11) of this title.

(G) Failure to nominate

If producers and importers fail to nominate individuals for appointment, the Secretary may appoint members on a basis provided for in the order.

(3) Terms; compensation

(A) Terms

The term of appointment to the Council shall be for 3 years, except that the initial appointments shall to the extent practicable be proportionately for 1-year, 2-year, and 3-year terms.

(B) Compensation

Council members shall serve without compensation but shall be reimbursed for their expenses incurred in performing their duties as members of the Council.

(c) Powers and duties of Council

The order shall define the powers and duties of the Council, which shall include the following powers and duties—

(1) to administer the order in accordance with its terms and provisions;

(2) to make rules and regulations to effectuate the terms and provisions of the order;

(3) to appoint members of the Council to serve on an executive committee;

(4) to propose, receive, evaluate, approve and submit to the Secretary for approval under subsection (d) of this section budgets, plans, and projects of mushroom promotion, research, consumer information, and industry information, as well as to contract and enter into agreements with appropriate persons to implement such plans or projects;

(5) to develop and propose to the Secretary voluntary quality and grade standards for mushrooms;

(6) to receive, investigate, and report to the Secretary complaints of violations of the order;

(7) to recommend to the Secretary amendments to the order; and

(8) to invest, pending disbursement under a plan or project, funds collected through assessments authorized under this chapter only in—

(A) obligations of the United States or any agency thereof;

(B) general obligations of any State or any political subdivision thereof;

(C) any interest-bearing account or certificate of deposit of a bank that is a member of the Federal Reserve System; or

(D) obligations fully guaranteed as to principal and interest by the United States,

except that income from any such invested funds may only be used for any purpose for which the invested funds may be used.

(d) Plans and budgets

(1) Submission to Secretary

The order shall provide that the Council shall submit to the Secretary for approval any plan or project of promotion, research, consumer information, or industry information.

(2) Budgets

The order shall require the Council to submit to the Secretary for approval budgets on a fiscal year basis of its anticipated expenses and disbursements in the implementation of the order, including projected costs of promotion, research, consumer information, and industry information plans and projects.

(3) Approval by Secretary

No plan or project of promotion, research, consumer information, or industry information, or budget, shall be implemented prior to its approval by the Secretary.

(e) Contracts and agreements

(1) In general

To ensure efficient use of funds, the order shall provide that the Council may enter into contracts or agreements for the implementation and carrying out of plans or projects of mushroom promotion, research, consumer information, or industry information, including contracts with producer organizations, and for the payment of the cost thereof with funds received by the Council under the order.

(2) Requirements

Any such contract or agreement shall provide that—

(A) the contracting party shall develop and submit to the Council a plan or project together with a budget or budgets that shall show estimated costs to be incurred for such plan or project;

(B) the plan or project shall become effective on the approval of the Secretary; and

(C) the contracting party shall keep accurate records of all of its transactions, account for funds received and expended, make periodic reports to the Council of activities conducted, and make such other reports as the Council or the Secretary may require.

(3) Producer organizations

The order shall provide that the Council may contract with producer organizations for any other services. Any such contract shall include provisions comparable to those provided in subparagraphs (A), (B), and (C) of paragraph (2).

(f) Books and records of Council

(1) In general

The order shall require the Council to—

(A) maintain such books and records (which shall be available to the Secretary

for inspection and audit) as the Secretary may prescribe;

(B) prepare and submit to the Secretary, from time to time, such reports as the Secretary may prescribe; and

(C) account for the receipt and disbursement of all funds entrusted to the Council.

(2) Audits

The Council shall cause its books and records to be audited by an independent auditor at the end of each fiscal year, and a report of such audit to be submitted to the Secretary.

(g) Assessments

(1) Collection and payment

(A) In general

The order shall provide that each first handler of mushrooms for the domestic fresh market produced in the United States shall collect, in the manner prescribed by the order, assessments from producers and remit the assessments to the Council.

(B) Importers

The order also shall provide that each importer of mushrooms for the domestic fresh market shall pay assessments to the Council in the manner prescribed by the order.

(C) Direct marketing

Any person marketing mushrooms of that person's own production directly to consumers shall remit the assessments on such mushrooms directly to the Council in the manner prescribed in the order.

(2) Rate of assessment

The rate of assessment shall be determined and announced by the Council and may be changed by the Council at any time. The order shall provide that the rate of assessment—

(A) for the first year of the order, may not exceed one-quarter cent per pound of mushrooms;

(B) for the second year of the order, may not exceed one-third cent per pound of mushrooms;

(C) for the third year of the order, may not exceed one-half cent per pound of mushrooms; and

(D) for the following years of the order, may not exceed one cent per pound of mushrooms.

(3) Use of assessments

The order shall provide that the assessments shall be used for payment of the expenses in implementing and administering this chapter, with provision for a reasonable reserve, and to cover those administrative costs incurred by the Secretary in implementing and administering this chapter, except for the salaries of Government employees incurred in conducting referenda.

(4) Limitation on collection

No assessment may be collected on mushrooms that a first handler certifies will be exported as mushrooms.

(h) Prohibition

The order shall prohibit any funds received by the Council under the order from being used in

any manner for the purpose of influencing legislation or governmental action or policy, except that such funds may be used by the Council for the development and recommendation to the Secretary of amendments to the order as prescribed in this chapter and for the submission to the Secretary of recommended voluntary grade and quality standards for mushrooms under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 et seq.).

(i) Books and records

(1) In general

The order shall require that each first handler and importer of mushrooms maintain, and make available for inspection, such books and records as may be required by the order and file reports at the time, in the manner, and having the content prescribed by the order.

(2) Availability to Secretary

Such information shall be made available to the Secretary as is appropriate for the administration or enforcement of this chapter, the order, or any regulation issued under this chapter.

(3) Confidentiality

(A) In general

Except as otherwise provided in this chapter, all information obtained under paragraph (1) shall be kept confidential by all officers and employees of the Department and the Council, and agents of the Council, and only such information so obtained as the Secretary considers relevant may be disclosed to the public by them and then only in a suit or administrative hearing brought at the request of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving the order.

(B) Limitations

Nothing in this paragraph may be construed to prohibit—

- (i) the issuance of general statements, based on the reports, of the number of persons subject to the order or statistical data collected therefrom, which statements do not identify the information furnished by any person; or
- (ii) the publication, by direction of the Secretary, of the name of any person violating the order, together with a statement of the particular provisions of the order violated by such person.

(4) Availability of information

(A) In general

Except as otherwise provided in this chapter, information obtained under this chapter may be made available to another agency of the Federal Government for a civil or criminal law enforcement activity if the activity is authorized by law and if the head of the agency has made a written request to the Secretary specifying the particular information desired and the law enforcement activity for which the information is sought.

(B) Penalty

Any person knowingly violating this subsection, on conviction, shall be subject to a

fine of not more than \$1,000 or to imprisonment for not more than 1 year, or both, and if an officer or employee of the Council or the Department, shall be removed from office.

(5) Withholding information

Nothing in this chapter shall be construed to authorize the withholding of information from Congress.

(j) Other terms and conditions

The order also shall contain such terms and conditions, not inconsistent with this chapter, as are necessary to effectuate this chapter, including provisions for the assessment of a penalty for each late payment of assessments under subsection (g) of this section.

(Pub. L. 101-624, title XIX, §1925, Nov. 28, 1990, 104 Stat. 3857; Pub. L. 102-237, title VIII, §803(1), Dec. 13, 1991, 105 Stat. 1882.)

REFERENCES IN TEXT

The Agricultural Marketing Act of 1946, referred to in subsec. (h), is title II of act Aug. 14, 1946, ch. 966, 60 Stat. 1087, as amended, which is classified generally to chapter 38 (§1621 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1621 of this title and Tables.

AMENDMENTS

1991—Subsec. (h). Pub. L. 102-237 substituted “governmental” for “government”.

§ 6105. Referenda

(a) Initial referendum

(1) In general

Within the 60-day period immediately preceding the effective date of an order issued under section 6103(b) of this title, the Secretary shall conduct a referendum among mushroom producers and importers to ascertain whether the order shall go into effect.

(2) Approval of order

The order shall become effective, as provided in section 6103(b) of this title, if the Secretary determines that the order has been approved by a majority of the producers and importers voting in the referendum, which majority, on average, annually produces and imports into the United States more than 50 percent of the mushrooms annually produced and imported by all those voting in the referendum.

(b) Succeeding referenda

(1) Determination concerning order

(A) In general

Effective 5 years after the date on which an order becomes effective under section 6103(b) of this title, the Secretary shall conduct a referendum among mushroom producers and importers to ascertain whether they favor continuation, termination, or suspension of the order.

(B) Request for referendum

Effective beginning 3 years after the date on which an order becomes effective under section 6103(b) of this title, the Secretary, on request of a representative group comprising

30 percent or more of the number of mushroom producers and importers, may conduct a referendum to ascertain whether producers and importers favor termination or suspension of the order.

(2) Suspension or termination

If, as a result of any referendum conducted under paragraph (1), the Secretary determines that suspension or termination of an order is favored by a majority of the producers and importers voting in the referendum, which majority, on average, annually produces and imports into the United States more than 50 percent of the mushrooms annually produced and imported by all those voting in the referendum, the Secretary shall—

(A) within 6 months after making such determination, suspend or terminate, as appropriate, collection of assessments under the order; and

(B) suspend or terminate, as appropriate, activities under the order in an orderly manner as soon as practicable.

(c) Manner

Referenda conducted pursuant to this section shall be conducted in such a manner as is determined by the Secretary.

(Pub. L. 101-624, title XIX, §1926, Nov. 28, 1990, 104 Stat. 3861.)

§ 6106. Petition and review

(a) Petition

(1) In general

A person subject to an order issued under this chapter may file with the Secretary a petition—

(A) stating that the order, any provision of the order, or any obligation imposed in connection with the order, is not in accordance with law; and

(B) requesting a modification of the order or an exemption from the order.

(2) Hearings

The petitioner shall be given the opportunity for a hearing on the petition, in accordance with regulations issued by the Secretary.

(3) Ruling

After such hearing, the Secretary shall make a ruling on the petition, which shall be final if in accordance with law.

(b) Review

(1) Commencement of action

The district courts of the United States in any district in which a person who is a petitioner under subsection (a) of this section resides or carries on business are hereby vested with jurisdiction to review the ruling on such person's petition, if a complaint for that purpose is filed within 20 days after the date of the entry of such ruling of the Secretary under subsection (a) of this section.

(2) Process

Service of process in such proceedings shall be conducted in accordance with the Federal Rules of Civil Procedure.

(3) Remands

If the court determines that such ruling is not in accordance with law, the court shall remand the matter to the Secretary with directions either—

(A) to make such ruling as the court shall determine to be in accordance with law; or

(B) to take such further action as, in the opinion of the court, the law requires.

(4) Enforcement

The pendency of proceedings instituted under subsection (a) of this section shall not impede, hinder, or delay the Attorney General or the Secretary from obtaining relief pursuant to section 6107 of this title.

(Pub. L. 101-624, title XIX, §1927, Nov. 28, 1990, 104 Stat. 3862.)

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (b)(2), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

§ 6107. Enforcement

(a) Jurisdiction

The several district courts of the United States are vested with jurisdiction specifically to enforce, and to prevent and restrain any person from violating, any order or regulation made or issued by the Secretary under this chapter.

(b) Referral to Attorney General

A civil action authorized to be brought under this section shall be referred to the Attorney General for appropriate action, except that the Secretary is not required to refer to the Attorney General a violation of this chapter, or any order or regulation issued under this chapter, if the Secretary believes that the administration and enforcement of this chapter would be adequately served by administrative action under subsection (c) of this section or suitable written notice or warning to the person who committed or is committing the violation.

(c) Civil penalties and orders

(1) Civil penalties

A person who willfully violates a provision of any order or regulation issued by the Secretary under this chapter, or who fails or refuses to pay, collect, or remit any assessment or fee duly required of the person under such order or regulation, may be assessed a civil penalty by the Secretary of not less than \$500 nor more than \$5,000 for each such violation. Each violation shall be a separate offense.

(2) Cease-and-desist orders

In addition to or in lieu of such civil penalty, the Secretary may issue an order requiring such person to cease and desist from continuing such violation.

(3) Notice and hearing

No penalty shall be assessed or cease and desist order issued by the Secretary under this subsection unless the Secretary gives the person against whom the penalty is assessed or the order is issued notice and opportunity for

a hearing before the Secretary with respect to such violation.

(4) Finality

The penalty assessed or cease and desist order issued under this subsection shall be final and conclusive unless the person against whom the penalty is assessed or the order is issued files an appeal with the appropriate district court of the United States in accordance with subsection (d) of this section.

(d) Review by district court

(1) Commencement of action

Any person against whom a violation is found and a civil penalty assessed or cease and desist order issued under subsection (c) of this section may obtain review of the penalty or order by—

(A) filing, within the 30-day period beginning on the date such penalty is assessed or order issued, a notice of appeal in the district court of the United States for the district in which such person resides or does business, or in the United States District Court for the District of Columbia; and

(B) simultaneously sending a copy of the notice by certified mail to the Secretary.

(2) Record

The Secretary shall promptly file in such court a certified copy of the record on which the Secretary found that the person had committed a violation.

(3) Standard of review

A finding of the Secretary shall be set aside only if the finding is found to be unsupported by substantial evidence.

(e) Failure to obey orders

A person who fails to obey a cease and desist order after the order has become final and unappealable, or after the appropriate United States district court has entered a final judgment in favor of the Secretary, shall be subject to a civil penalty assessed by the Secretary, after opportunity for a hearing and for judicial review under the procedures specified in subsections (c) and (d) of this section, of not more than \$500 for each offense. Each day during which such failure continues shall be considered as a separate violation of such order.

(f) Failure to pay penalties

If a person fails to pay an assessment of a civil penalty after it has become final and unappealable, or after the appropriate United States district court has entered final judgment in favor of the Secretary, the Secretary shall refer the matter to the Attorney General for recovery of the amount assessed in any district court in which the person resides or conducts business. In such action, the validity and appropriateness of such civil penalty shall not be subject to review.

(Pub. L. 101-624, title XIX, §1928, Nov. 28, 1990, 104 Stat. 3863; Pub. L. 102-237, title VIII, §803(2), Dec. 13, 1991, 105 Stat. 1882.)

AMENDMENTS

1991—Subsec. (d)(1)(A). Pub. L. 102-237 substituted “United States District Court” for “United States district court”.

§ 6108. Investigations and power to subpoena

(a) Investigations

The Secretary may make such investigations as the Secretary considers necessary for the effective administration of this chapter or to determine whether any person subject to this chapter has engaged or is engaging in any act that constitutes a violation of this chapter or of any order, rule, or regulation issued under this chapter.

(b) Subpoenas, oaths, and affirmations

(1) In general

For the purpose of an investigation made under subsection (a) of this section, the Secretary may administer oaths and affirmations and issue a subpoena to require the production of any records that are relevant to the inquiry. The production of any such records may be required from any place in the United States.

(2) Administrative hearings

For the purpose of an administrative hearing held under section 6106 or 6107 of this title, the presiding officer is authorized to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any records that are relevant to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in the United States.

(c) Aid of courts

In case of contumacy by, or refusal to obey a subpoena issued to, any person, the Secretary may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in order to enforce a subpoena issued by the Secretary under subsection (b) of this section. The court may issue an order requiring such person to comply with such a subpoena.

(d) Contempt

Any failure to obey such order of the court may be punished by such court as a contempt thereof.

(e) Process

Process in any such case may be served in the judicial district in which such person resides or conducts business or wherever such person may be found.

(f) Hearing site

The site of any hearings held under section 6106 or 6107 of this title shall be within the judicial district where such person resides or has a principal place of business.

(Pub. L. 101-624, title XIX, §1929, Nov. 28, 1990, 104 Stat. 3864; Pub. L. 102-237, title VIII, §803(3), Dec. 13, 1991, 105 Stat. 1882.)

AMENDMENTS

1991—Subsec. (b)(2). Pub. L. 102-237 struck out “section” after “6106 or”.

§ 6109. Savings provision

Nothing in this chapter may be construed to preempt or supersede any other program relat-